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PATENT
Customer No. 22,852
Attorney Docket No. 7528.0003-02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Todd J. MORTIER et al.) Group Art Unit: 3738
)
Application No.: 10/679,691) Examiner: D. Willse
)
Filed: October 7, 2003) Confirmation No. 3569
)
For: VALVE TO MYOCARDIUM)
TENSION MEMBERS DEVICE)
AND METHOD)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO OFFICE COMMUNICATION

In an Office Communication dated October 6, 2004, the Examiner asserts that the Response to Restriction Requirement dated July 20, 2004 is not fully responsive because "[t]he examiner does not understand how claims 18-25 are readable on the elected species, especially since the claims do not appear to be supported in grandparent application serial no. 08/992,316, US 6,332,893 B1." The Examiner further requires that Applicants specifically point out the support for claims 18-25 in the original disclosure of that grandparent application.

Regarding the issue of support, claims 18-25 are fully supported by at least Figs. 5, 6, and 16, and the corresponding written description of those figures found at col. 3, lines 29-54 and at col. 4, lines 55-67 of U.S. Patent No. 6,332,893 B1 ("the grandparent application"). For example, Figure 16 and its corresponding text show and describe two

members 24 that extend through valve tissue. The present application, which claims the benefits of priority to the grandparent application and to parent U.S. Application No. 09/981,790, filed October 19, 2001 ("the parent application), under 35 U.S.C. § 120, contains the identical figures and written description as the parent application and the grandparent application. Thus, claims 18-25 of the instant application are fully supported by the grandparent application, the parent application, and the present application. Reconsideration is requested.

The Examiner also asserts that he does not understand how claims 18-25 are readable on the elected species. In the Office Action of June 21, 2004, the Examiner required a restriction between the following allegedly patentably distinct groups:

- I. Claims 18-30, 36, and 37, allegedly drawn to a method involving two elongate members; and
- II. Claims 31-35, allegedly drawn to a system.

Also in that Office Action, the Examiner required election between allegedly patentably distinct species of basal anchors (Species Ia-Ic), secondary anchors (Species IIa-IIc), and configurations (Species IIIa-IIIc), as set forth at pages 2-3 of the Office Action. The Examiner required the election of one species of basal anchors, one species of secondary anchors, and one species of configurations.

In the Response to Restriction Requirement filed July 20, 2004, Applicants provisionally elected to prosecute Group I (claims 18-30, 36, and 37), and Species Ia (Figure 12), Species IIc (Figure 21), and Species IIIc (Figure 9). Applicants maintain that each of claims 18-30, 36, and 37 in Group I reads on the elected species, as set forth in that Response. In particular, claims 18-25 are generic to the various basal

anchor species, secondary anchor species, and configuration species set forth in the June 21, 2004 Office Action. That is, none of claims 18-25 are limited to the particular species of basal anchors, secondary anchors, or configurations specified by the Examiner. Therefore, claims 18-25 encompass all of those identified species.

Should the Examiner disagree with Applicants' above assertions, however, Applicants instead elect Species Id (Figs. 15 and 16), Species IIc (Fig. 21), and Species IIIc (Fig. 9). Applicants submit that claims 18-30, 36, and 37 "read on" these elected species. Applicants note that this offer to elect a different species of basal anchors from that elected in the July 20, 2004 response, should not be considered an admission by Applicants that the response was not fully responsive or that claims 18-30, 36, and 37 do not "read on" the elected species in that response. Rather, for the reasons discussed herein, Applicants believe that the July 20, 2004 response was fully responsive, and Applicants offer herein to elect a different species should the Examiner disagree with Applicants' arguments is made solely to expedite prosecution of this application.

Unless specifically stated otherwise herein, Applicants decline to subscribe to any characterizations and/or assertions set forth in the Office Communication.

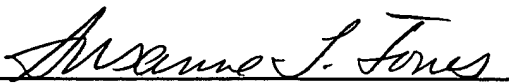
In light of the above remarks, Applicants request the examination of claims 18-30, 36, and 37.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: November 4, 2004

By: 
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